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Summary record of the 940th meeting
Held at Headquarters, New York, on Wednesday, 27 June 2012, at 3 p.m.

Chair: Mr. Wiwen-Nilsson (Vice-Chair) ..... (Sweden)

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12-39172 (E)

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Mr. Wiwen-Nilsson (Sweden), Vice-Chair, took the Chair.

The meeting was called to order at 3.15 p.m.

Finalization and adoption of a Guide to the Enactment of the UNCITRAL Model Law on Public Procurement (*continued*) (A/CN.9/XLV/CRP.1/Add.2)

1. **The Chair** drew attention to document A/CN.9/XLV/CRP.1/Add.2 which had just been distributed and invited the members of the Commission to familiarize themselves with its contents.

The meeting was suspended at 3.20 p.m. and resumed at 3.45 p.m.

Future work in the area of public procurement and related areas (*continued*) (A/CN.9/755)

2. **Ms. Nicholas** (Secretariat) said that paragraphs 38 and 39 of the note by the secretariat on possible future work in the area of procurement and infrastructure development (A/CN.9/755) raised questions about how to ensure that the Model Law was widely enacted, implemented and interpreted, and also about the use of modern communication methods to publicize UNCITRAL material that supported the Model Law. The secretariat wished to determine how much flexibility there was within the United Nations publications operation for interactive and user-friendly versions of the Guide and other subsequent papers.

3. Several delegations had suggested specific topics, such as suspension and debarment, and procurement planning, which could be dealt with in supplementary papers. However, a more systematic approach might be required in order to identify appropriate areas and the Commission might consider that, without a better understanding of what publications other bodies in related fields might be working on, it would be premature to take too many specific steps.

4. **Mr. Imbachi Cerón** (Colombia) said that he would be interested to hear the secretariat's opinion regarding his delegation's proposal regarding competition in public procurement. Electronic public procurement mechanisms had created problems for some companies with limited technological capabilities. Thus, it would be important for the Commission to develop a mechanism that could be used by the public and the private sector to establish policies to prevent unfair competition prior to the award of contracts.

5. Colombia continued to support the work of UNCITRAL in other areas, but considered that regulating competition was extremely important. A definite policy could give assurances to companies that they were all competing under the same conditions.

6. **Mr. Loken** (United States of America), referring to the dissemination of the Model Law, said that he wished to call the secretariat's attention to the Global Information Network (GLIN), a project of the United States Library of Congress. Its ambition was to be a comprehensive and universally accessible online collection of treaties, statutes, regulations, judicial decisions and principal secondary materials. The Network was currently trying to establish a base in every country, usually within the national legislature. It might be possible for UNCITRAL to involve domestic institutions in its work as a means of augmenting its internal capacity.

7. **Mr. Fruhmann** (Austria) said that the secretariat might consider bilateral agreements with institutions in different enacting States that would provide information on public procurement and relevant jurisprudence, thus creating a network of States where the Model Law was being implemented so as to provide feedback to guide revisions of the Law and future work.

8. The idea that the Guide to Enactment should be a work in progress that could be updated and enriched through the Internet could contribute real added value, and he asked what its status was.

9. **The Chair** said that a network of Governments in connection with the Case Law on UNCITRAL Texts (CLOUT) was already in existence and provided information about the Model Law and other issues. Also, the draft decision adopting the Guide to Enactment (A/CN.9/XLV/CRP.2) provided for feedback and updating of the Guide, as mentioned by Austria.

10. **Mr. Wang** (Norway) said that he agreed that any future work in the area of public procurement should take into account other international instruments relevant to that particular area, including the existing and future initiatives of the European Union.

11. Norway supported the idea that the topics of sustainability and environmental issues should be considered, either among the proposals for additional work on public procurement not addressed in the Model Law, or in any other appropriate manner.

12. **Mr. Zhao** Yong (China) said he supported the ideas proposed by Colombia. Furthermore, it was very difficult for developing countries to know which method of procurement to use in each specific case. Therefore, as part of its future work, UNCITRAL should study the costs and benefits of, and the infrastructure needed for, each procurement method in order to provide guidance to developing countries.

13. **Ms. Leblanc** (Canada) said that the secretariat had noted that the 2011 Model Law would rarely be enacted without some sort of tailoring to local circumstances, but local circumstances were not unique, and States frequently shared very similar legal frameworks. UNICTRAL staff were frequently asked to provide technical assistance to States with regard to enactment, and it would be useful to know whether the report of their work could be published so that best practices could be shared among States with similar legal frameworks.

14. **The Chair** said that it was emerging from the discussions that member States would be interested in receiving information on the experiences of others in implementing the Model Law and it might be useful to hear the secretariat's views on how that aspect could be undertaken.

15. **Mr. Loken** (United States of America) said that the United States Institute of Peace (USIP) had a programme relating to security, police work and the rule of law. Its main product was a collection of best practices on a global scale, which appeared to be very similar to the idea being discussed

16. Regarding future work, some years earlier UNCITRAL had organized a colloquium on commercial fraud and the misuse of UNCITRAL instruments. However, the topic had not been assigned to a working group and he was unaware of the results.

17. **The Chair** said that the results of the colloquium had been indicators of commercial fraud, which could be of interest to members of the Commission as reference material. However, delegations should keep in mind that UNCITRAL focused on law, and some proposals possibly exceeded its mandate and resources.

18. **Mr. Sorieul** (Secretary of the Commission) said that UNCITRAL naturally wanted its work to be disseminated as widely as possible. Some excellent ideas had been put forward, which would require the secretariat to undertake new activities and provide various types of services. The secretariat was also expected to provide follow-up on previous work, while preparing future work; as time went by, an increasing number of texts required more extensive dissemination and implementation. The secretariat's capacity was, however, limited. In 2012, the secretariat was the same size and had the same resources as in 1968 when it had been set up.

19. The CLOUT system compiled case law in the six languages of the United Nations and the limits of the secretariat's capacity in that respect had been reached. It would be useful if the States themselves would contribute to the compilation of case law on procurement. The secretariat would still require additional resources at the stage of disseminating the information in the form of a summary of case law.

20. **Ms. Mokaya-Orina** (Kenya) said that the Model Law had formed the bedrock for procurement reform in many countries including her own; nevertheless, it needed to be updated to cover certain issues, such as electronic communication in public procurement.

21. **Mr. Mugasha** (Uganda) said that, although the Commission was currently dealing with public procurement, interest had been expressed in areas such as microfinance and international contracts. The different proposal would have to be assessed in order to establish priorities and it would be useful to know when the Commission would undertake such an exercise.

22. **Mr. Wallace** (United States of America) said that some of the additional topics relating to procurement set out in document A/CN.9/755 did not lend themselves readily to treatment in the Model Law and it was not practical to reopen the issue at the current stage. Several delegations had expressed great interest in continuing to work in specific areas that they considered of value to their own and other countries, and the secretariat could perhaps undertake certain work in the area of procurement that would address those concerns.

23. As to various issues relating to public-private partnerships (PPP) and privately financed infrastructure (PFI), there appeared to be broad interest in pursuing work in that area. A colloquium might be held to identify work that UNCITRAL might usefully undertake in that regard. If the Working Group were to be asked to undertake further work in that area, it would need a clear mandate.

The meeting was suspended at 4.35 p.m. and resumed at 4.55 p.m.

24. **The Chair**, summarizing the discussion, said that when deciding on future work, it should be recalled that the UNICTRAL mandate related to legal matters and products. That said, there appeared to be a common view that work should continue on PPP/PFI issues, the scope of such work to be defined by a colloquium.

25. The Commission had also expressed a desire to gather information on the implementation of the Model Law and any problems that might be encountered, and to make such information accessible to States through UNCITRAL. However, there was a limit to what UNICTRAL could do and the Commission should not underestimate the resources required to perform that task.

26. As to specific aspects of the Model Law, such as the costs and benefits of using certain methods of procurement, and sustainability or sustainable procurement, while the Commission had expressed interest in considering such topics, there were limitations imposed by resource constraints and the UNCITRAL mandate. The United Nations International Development Organization was examining the socioeconomic aspects of sustainability and was better placed to do so.

27. In conclusion, regarding future work, the secretariat should be instructed to make preparations for a colloquium, in consultation with members, which would provide the basis for a decision by the Commission in 2013 on the content and scope of its future work. In relation to the collection and dissemination of information on the implementation of the Model Law, the secretariat should be instructed to examine the matter and define what was feasible in terms of resources, and experience gained from the CLOUT system.

28. Consequently, the Commission would not consider contract management or procurement planning. Although suspension and debarment could be seen as a follow-up to the Model Law, it was not the moment to undertake new work aimed at adding to or amending the Model Law. Lastly, sustainability could not be considered a legal issue.

29. **Ms. Nicholas** (Secretariat) asked whether the secretariat should assess whether some of the topics that would not be included as future work on the Model Law might be addressed in a paper, and ascertain whether relevant documentation had been prepared by other organizations working in the area.

30. **The Chair** said that he understood that the secretariat should not be preparing papers, but merely collecting and disseminating information concerning the Model Law and its implementation.

31. **Mr. Wallace** (United States of America) said that, for many years, the possibility of preparing papers had been before the Working Group and had never been rejected, although it had never been discussed at length. The obvious constraint was lack of resources and it was therefore an issue of resource allocation within the secretariat. It appeared that, based on the interest expressed by China, Colombia and Norway, cost/benefits, sustainability and competition were important topics. They should not be ruled out entirely, but their relative merit should be weighed and a determination should be made as to whether they fell within the UNCITRAL mandate.

32. **The Chair** said that the mandate of UNICITRAL was not to delve into issues such as costs/benefits and sustainability; rather, its efforts should focus on the Model Law.

33. **Ms. Nicholas** (Secretariat) said that the secretariat might look at what was available on such topics and report back to the Commission, which could then decide whether sufficient guidance existed in specific areas.

34. **Mr. Wallace** (United States of America) said that the work of the Office of Technology Assessment of the United States Congress could provide a useful example, as it did not do original research, but assessed the value of existing research in order to advise Congress.

35. **The Chair** said that if there were no objections to summary of the discussion, he would take it that the Commission wished to adopt the conclusions set out in it.

36. *It was so decided.*

Finalization and adoption of a Guide to Enactment of the UNCITRAL Model Law on Public Procurement (*continued*) (A/CN.9/XLV/CRP.1/Add.1 and CRP.2)

37. **Mr. Mugasha** (Uganda), Rapporteur, introducing the section of the draft report on agenda item 4 (A/CN.9/XLV/CRP.1 and Add.1 and 2), said that it summarized the Commission's consideration of proposals for the Guide to Enactment of the UNCITRAL Model Law on Public Procurement and focused on the decisions taken.

38. **Mr. Wallace** (United States of America), noting the use of "more user-friendly" in both paragraph 1 of

A/CN.9/XLV/CRP.1/Add.1 and paragraph 19 of addendum 2, asked whether a more general observation could be made.

39. **Ms. Nicholas** (Secretariat) said that at an early stage in the deliberations, it had been stated that the Commission would return to the issue of ensuring user-friendliness. So the simplest solution would be to eliminate the first reference, and to leave paragraph 19 of addendum 2 unchanged.

40. **Mr. Wallace** (United States of America) said that paragraph 2 stated that the Commission had "approved the text of the draft Guide contained in document A/CN.9/WG.1/WP.79", which suggested that it had approved the entire draft Guide, whereas the Commission had only approved that document, but not the 19 addenda. He suggested that the text should be amended to read "approved that part of the text of the draft Guide contained in ..."

41. **Ms. Nicholas** (Secretariat) said that the secretariat understood that the terminology should be consistent throughout the report. Therefore, each addendum would refer to "that part of the text ...".

42. **Mr. Fruhmann** (Austria) said that paragraph 3 (c) stated that "collusion would probably violate the law of the State", but should read "collusion would violate the law of the State". Subparagraph (e), which referred to a point raised by Austria, stated that "the procuring entity's complicity in collusion was not uncommon". However, to be technically correct, it was not the procuring entity, which was the State, but rather the State's representatives that might be in collusion with the bidder. Thus the subparagraph should read: "the complicity in collusion of the representatives of the procuring entity is not uncommon".

43. **Mr. Wallace** (United States of America) said that the second sentence of paragraph 9 needed redrafting in order to ensure greater accuracy. He proposed that it be amended to read: "... electronic reverse auctions would be included, analogous to the discussion of the potential advantages of using centralized purchasing agencies ...", thereby eliminating the reference to subparagraph 4 (a). Reference should be made to "in subparagraphs 4 (g) and (i)", since they were the only ones relevant to the discussion.

44. **The Chair** said that subparagraph 4 (a) had been mentioned by Austria and the reference to it should therefore not be eliminated.

45. **Mr. Wallace** (United States of America) said that his observations referred to drafting problems. The reference to administrative efficiency in 4 (a) was not about third party advisers, but rather the administrative efficiency of centralized purchasing.

46. **Ms. Nicholas** (Secretariat) proposed that the paragraph could be amended to read "analogous to the discussions of administrative efficiency in subparagraph 4 (a) and the potential advantages in using centralized purchases under the other subparagraphs".

47. **Mr. Fruhmann** (Austria) requested clarification of how paragraph 8 would be worded in view of the observations on paragraph 2.

48. **Ms. Nicholas** (Secretariat) said that the current instructions were that the secretariat should redraft paragraph 2 to read: "The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79". In addition, for the sake of consistency and to avoid any misunderstandings, paragraph 8 would be revised to read: "The Commission approved that part of the text of the draft Guide contained in document A/CN.9/WG.I/WP.79/Add.10."

49. **Mr. Zhao** Yong (China) said that the words "electronic reverse auctions" and "auctions" had been used interchangeably in paragraph 9, and the text should be amended in line with paragraph 17 of addendum 2, which correctly reflected the concerns expressed by the Chinese delegation.

50. *A/CN.9/XLV/CRP.1/Add.1, as orally amended, was adopted.*

51. **Mr. Wallace** (United States of America) requested clarification regarding paragraph 3 of A/CN.9/XLV/CRP.1/Add.2.

52. **Ms. Nicholas** (Secretariat) said that, if members found the wording to be too obscure, it could be amended to read: "The Secretariat was instructed to ensure consistency in the discussion of similar issues throughout part III of the Guide, ensuring that the relative emphasis on the constituent elements remained the same throughout."

53. **Mr. Wallace** (United States of America) asked for clarification regarding the phrase "avoid the use of the word 'author' when amending paragraph 29" in paragraph 4 (d).

54. **Ms. Nicholas** (Secretariat) said that the instruction had been to use the term "issuers of documents" or some similar term.

55. **Mr. Wallace** (United States of America) said that the last sentence of paragraph 5 described what seemed to him to be a rather ambitious task and he asked for some clarification.

56. **Ms. Nicholas** (Secretariat) said that Colombia had raised the issue of adapting the Model Law to local circumstances. She suggested that the text be amended to read: "The Commission also confirmed that the discussion in the Guide should remain ...".

57. **Mr. Grand d'Esnon** (France) said that paragraph 6 (a) might be interpreted to mean that the Model Law authorized a State not to uphold international standards.

58. **Ms. Nicholas** (Secretariat) said that the English version would be revised to read: "... risks violating free trade commitments".

59. **Mr. Zhao** Yong (China) said that the last sentence of paragraph 8 expressed only one of the purposes of tender security, the main purpose of which was to reduce the risk of tendering and to avoid irresponsible bids. The purpose of the performance guarantee was to allay concerns as regards the qualification and capacities of the supplier.

60. **Ms. Nicholas** (Secretariat) said that the text would be amended to read "one purpose of tender security ...".

61. **Mr. Wallace** (United States of America) said that the phrase "the Guide would state clearly that requiring tender security should not be considered the norm" appeared to be somewhat stronger than the position emerging from the discussion.

62. **The Chair** said that the report was supposed to reflect the actual conclusions reached, and the Commission had concluded that tender security "should not be the norm".

63. **Mr. Wallace** (United States of America) said that paragraph 11 did not accurately reflect the Commission's position and should be amended accordingly. Noting that paragraph 19 stated that "the Commission approved the remaining parts of the Guide", he asked whether the Commission had to take any further legal action in that regard.

64. **Ms. Nicholas** (Secretariat) said that the text in paragraph 19 was required for the formal adoption of the Guide.

65. **The Chair** said that, since a formal acknowledgement of the work of the secretariat could not be included in the Guide, he wished to place on record the Commission's gratitude to the secretariat.

66. **Mr. Fruhmann** (Austria) said that the first operative paragraph of the draft decision of the adoption of the Guide to Enactment of the UNCITRAL Model Law on Public Procurement (A/CN.9/XLV/CRP.2) should include a reference to addenda 1 to 3, because those documents reflected the deliberations that led to the amendment and finalization of the text.

67. While paragraph 5 endorsed efforts to establish a mechanism for monitoring practices in the use of the Model Law and the Guide, it did not go far enough in envisaging the Guide as a work in progress, which could be continually updated.

68. Lastly, he requested clarification of the reference to "other agencies and mechanisms" in paragraph 6.

69. **Ms. Nicholas** (Secretariat), replying to the representative of Austria, said that the Guide to Enactment would be adopted at the current session and the documents summarizing the Commission's deliberations would be cited. On his second point, updating the Guide would require a further decision by the Commission, which explained the wording used.

70. The manner of dissemination had not been addressed in the draft decision. If the Commission considered that the secretariat should be authorized to arrange for the appropriate means of publication, a provision to that effect should be included in paragraph 2.

71. As to paragraph 6, similar language had been used when the Commission had adopted the Model Law. "Procurement reform agencies" referred to multilateral development banks, the Organization for Economic Cooperation and Development and others, while "mechanisms" included the United Nations Office on Drugs and Crime, the United Nations Convention against Corruption, and other conventions.

72. If the Commission considered that significant redrafting of the proposed text was required, a decision could be postponed to the following day.

73. *It was so decided.*

The meeting rose at 6.05 p.m.

United Nations A/CN.9/SR.941

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Sixty-seventh session

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United Nations Commission on International Trade Law

Forty-fifth session

Summary record of the 941st meeting
Held at Headquarters, New York, on Thursday, 28 June 2012, at 3 p.m.

Chair: Mr. Sikirić. . . . . (Croatia)

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Finalization and adoption of a Guide to Enactment of the UNCITRAL Model Law on Public Procurement (*continued*)

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12-39476 (E)

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The meeting was called to order at 3.20 p.m.

Other business

1. **The Chair** invited the Commission to hear a presentation on a proposal to replace written summary records of its meetings with digital recordings.

2. **Mr. Fruhmann** (Austria), supported by **Mr. Bellenger** (France), said that the Commission should have been informed of the change in its programme of work. It would be preferable to first complete discussion of document A/CN.9/XLV/CRP.2.

3. **Mr. Zhao** Yong (China) said that his delegation had planned its participation in the work of the Commission on the basis of the approved agenda. It would be helpful if the Commission could proceed with its work accordingly.

4. **Mr. Sorieul** (Secretary of the Commission) said that the Chief of the Conference Management Services at the United Nations Office in Vienna was unable to give the presentation at any other time.

5. **The Chair** said that he took it that the Commission agreed to hear the presentation.

6. *It was so decided.*

Presentation entitled "Review of the use of summary records of UNCITRAL" and demonstration of the digital recording system as used by the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee

7. **Mr. Karbuczky** (Chief of the Conference Management Service at the United Nations Office at Vienna) said that digital audio recordings of meetings were an inexpensive alternative to costly summary records. Audio recordings offered an authentic record of the proceedings in the original language, unmediated by précis-writers, and unlike summary records, were available immediately. In adopting the new cost-efficient and "green" system, the Commission would contribute greatly to the reform of the United Nations.

8. **Ms. Leblanc** (Canada) wished to know what the next step was with respect to the proposed digital recording system.

9. **Mr. Fruhmann** (Austria) said that an executive summary of a full day's worth of discussions, such as the one prepared by the Secretariat, was much more useful for an interested reader than an audio recording of the meetings. He wished to know whether digital recordings would eventually replace both summary records and conference room papers such as those prepared by the secretariat.

10. **Mr. Sorieul** (Secretary of the Commission) said that the proposed digital recording system would replace only summary records, not the documents prepared by the secretariat. The audio files would be made available together with a list of speakers, to help a user know who was speaking at what time. Summary records of the Commission's meetings would continue to be prepared during its next session, in parallel with audio recordings. Commission members would then be able to evaluate the digital recording system and decide whether it could replace summary records.

11. **Mr. Shautsou** (Belarus) said that summary records were more useful than audio recordings for delegates trying to prepare for the Commission's meetings. It would be more difficult to find a specific statement in the audio files than to find the same information in a summary record. Would the audio files be organized by agenda item or organized chronologically so as to enable a researcher to follow the evolution of a topic from year to year?

12. **Mr. Sorieul** (Secretary of the Commission) said that ease of use was critical, which was why summary records would not be eliminated until it was certain that the audio recordings could be used effectively for research. He noted that the low cost of audio recordings also made it possible to record the meetings of the Working Groups, which currently did not receive summary record coverage.

13. **Mr. Bellenger** (France) deplored the meeting time lost to the presentation and the discussion and asked the Secretariat to avoid changing the Commission's programme of work without prior approval from the Commission.

Finalization and adoption of a Guide to Enactment of the UNCITRAL Model Law on Public Procurement (*continued*) (A/CN.9/XLV/CRP.2; A/CN.9/WG.I/WP.79)

A/CN.9/XLV/CRP.2 (*continued*)

14. **The Chair** said that the Secretariat had incorporated the words "as recorded in this report" at the end of paragraph 1 of the draft decision, as

requested by the representative of Austria at the previous meeting.

15. **Mr. Fruhmann** (Austria), responding to the Chair's question with respect to paragraph 6 of the draft decision, said that the explanation provided by the secretariat was sufficient.

16. **Mr. Grand d'Esnon** (France) said that he shared the opinion of the United States representative that the first sentence of paragraph 6 was unclear. Since the wording had been used previously, according to the secretariat, he was willing to let the sentence stand for the sake of consistency.

17. **Ms. Leblanc** (Canada), referring to the last preambular paragraph, said that the words "understanding, enactment, interpretation and application" should be put in a more logical order.

18. **Ms. Nicholas** (Secretariat) said that that was a set phrase that had been used in previous Commission documents.

19. **Mr. Loken** (United States of America) said that, contrary to what was stated in paragraph 1, the editing and finalization of the text done by the secretariat was not based exclusively on the deliberations on the Commission but also on the report of the last meeting of the Working Group (A/CN.9/745), which contained the decisions taken by the Working Group regarding changes to the text but did not always contain the final wording.

20. **Ms. Nicholas** (Secretariat) said that the words "at this session and those set out in document A/CN.9/745" could be added at the end of the paragraph.

21. **Mr. Loken** (United States of America) said that it was unclear what was meant by the phrase "other stakeholders dealing with public procurement proceedings" at the end of paragraph 4.

22. **Ms. Nicholas** (Secretariat) said that the text had been taken from the previous year's resolution. The intention had been to include both the State and the suppliers involved in the proceedings. The phrase could be replaced with "others involved in public procurement proceedings".

23. **Mr. Loken** (United States of America) said, with regard to paragraph 5, that it was unclear whether it was necessary to suggest the establishment of a formal mechanism within or by the secretariat for monitoring practices with regard to the Model Law and the Guide. He proposed replacing the first part of paragraph 5 with the following wording: "*Endorses* efforts by the Commission's secretariat to monitor practices and disseminate information with regard to the use of the Model Law and the Guide".

24. *It was so decided.*

25. **Mr. Loken** (United States of America) said that it was unclear whether the word "coordination" in paragraph 6 referred to procurement reform agencies or to coordination with other mechanisms, or if the aim was to highlight the importance of those mechanisms.

26. **Ms. Nicholas** (Secretariat) said that the intention was to stress the importance of the mechanisms. She proposed adding "of" before "other mechanisms" for greater clarity.

27. **Mr. Loken** (United States of America) said that, the phrase starting with "aimed at achieving the increased coordination" should be replaced with the simpler wording that had been used in the previous year's decision.

28. *A/CN.9/XLV/CRP.2, as orally amended, was adopted.*

29. *The Guide to Enactment of the UNCITRAL Model Law on Public Procurement as a whole, as orally amended, was adopted.*

Future work in the area of public procurement and related areas (*continued*) (A/CN.9/XLV/CRP.1/Add.3)

A/CN.9/XLV/CRP.1/Add.3

30. **The Chair** invited the Rapporteur to introduce the section of the draft report of the Commission on the work of its forty-fifth session relating to future work in the area of public procurement and related areas.

31. **Mr. Mugasha** (Uganda), Rapporteur, introduced document A/CN.9/XLV/CRP.1/Add.3.

32. **Mr. Loken** (United States of America) said that the word "possible" should be added before the words "future work" in paragraph 1.

33. *It was so decided.*

34. **Mr. Wallace** (United States of America) said that a model law did not directly regulate anything, but rather provided the basis for the enactment of laws that

did. It would be more accurate to say that a model law provided guidance on procurement planning.

35. **Ms. Nicholas** (Secretariat) said that the word "regulating" could be replaced with "addressing".

36. **Ms. Nicholas** (Secretariat), replying to the question put by the representative of France, said that FIDIC was the French acronym for the International Federation of Consulting Engineers; an explanation to that effect would be given earlier in the text.

37. **Mr. Sorieul** (Secretary of the Commission) said that FIDIC was a non-governmental organization active in the production of model contracts in the field of international engineering and had participated in the work of UNCITRAL in the past.

38 **Mr. Wang** (Norway) said that paragraph 5 should include sustainability and environmental protection among the guidance paper topics being considered by the Commission, as there had been no opposition to including that topic during prior discussion. Accordingly, the second half of the last sentence in paragraph 4 (e), which suggested that capacity-building was considered more important than providing guidance on the topic of sustainability and environmental protection, should be deleted.

39. **Mr. Loken** (United States of America) said that a period could be inserted after the word "necessary" in paragraph 4 (e) and a separate sentence could be constructed out of the last clause, in order to preserve the idea that building required capacity was important.

40. **Mr. Wallace** (United States of America) said that the issue of a contractor being prevented from selling the subject of a concession to another entity without the consent of the Government was already addressed in the Model Law, contrary to what was suggested in paragraph 14.

41. **Ms. Nicholas** (Secretariat) said that the text reflected what had been said in the discussion. She suggested that the paragraph should read: "The Commission also noted that other issues not currently addressed in the UNCITRAL PFIPs instruments might also be appropriately included in any future work on PPS, together with other issues such as whether to prevent a contractor from selling the subject of a concession to another entity without the consent of the Government".

42. **Mr. Wallace** (United States of America) proposed the insertion of the word "possible" before "work and primary issues to be addressed" in the third and fourth lines of paragraph 15.

43. **Mr. Bellenger** (France) said that in paragraph 13 of the French version, "élaborer des règlements" should be replaced by "élaborer des règles". He wished to know what was understood by "engaging investors in the development" of rules and regulations applicable to them. Did it mean that investors would be called on to participate in the Commission's work? He also requested clarification of the "other bodies" referred to in the eighth line of paragraph 15.

44. **Mr. Wallace** (United States of America) said that in several countries, including his own, "notice and comment" process for the adoption of draft regulations afforded interested parties an opportunity to state their views. He suggested that investors might similarly be asked to comment on rules and regulations that were applicable to them, rather than being engaged in their development.

45. **Ms. Nicholas** (Secretariat) suggested the following wording: "... by allowing investors an opportunity to comment on rules and regulations ...". In response to the question put by the representative of France, she said that the other bodies in paragraph 15 referred to non-governmental and intergovernmental organizations present at the current session. She could provide a list, if required.

46. *A/CN.9/XLV/CRP.1/Add.3, as orally amended, was adopted.*

The meeting was suspended at 4.50 p.m. and resumed at 5.10 p.m.

Promotion of ways and means of ensuring a uniform interpretation and application of UNCITRAL legal texts (A/CN.9/748)

47. **Mr. Lemay** (International Trade Law Division), introducing the note by the Secretariat on the system for collecting and disseminating case law on UNICITRAL texts (CLOUT) (A/CN.9/748), said that, at the time the note had been drafted, 116 issues of case-law abstracts dealing with 1,134 cases had been prepared for publication. The network of national correspondents, which was the backbone of the system, was being streamlined in order to strengthen its sustainability and make it more responsive to changing

circumstances. States had accordingly been requested to appoint or reappoint their national correspondents with effect from the first day of the current session; 28 States had complied with that request.

48. The note also reported on the preparation of a digest of case law on the UNCITRAL Model Law on Cross-Border Insolvency. The Commission might wish to consider the desirability of such a project, while the Secretariat might suitably explore the possibility of collaborating with national correspondents and other experts to that end. He reminded the Commission of the resource-intensive nature of CLOUT. In the absence of any increase in resources, the secretariat had refined a project proposal to secure the additional funding required to maintain and develop the system. The project would also pilot a "community of practice" for the benefit of members of the legal community insufficiently aware of UNCITRAL texts, which would be particularly valuable for developing countries and economies in transition. The secretariat was accordingly seeking assistance from States and other donors.

49. **Mr. Wallace** (United States of America) said that the International Institute for the Unification of Private Law (UNIDROIT) had recently discontinued its database, which had been very incomplete. The fact was that a legal database was useful to lawyers only if it covered all cases. The problem was lack of resources, for UNCITRAL just as much as for UNIDROIT. He reminded the Commission of the Library of Congress's Global Information Network (GLIN), whose aim was to make every treaty, regulation, statute and judicial decision available online. Other countries, such as Chile, were involved in similar efforts.

50. **Mr. Sorieul** (Secretary of the Commission) said that the Commission could not offer to take over any aspect of the UNIDROIT database, owing to its own lack of resources. GLIN was of great interest, but it had its own funding problems which could call into question its future existence in its present form. Ideally, CLOUT might be able to develop closer ties with that network; however, caution was in order.

51. **The Chair** raised the question whether the time had come for the Commission to expand its work relating to digests and whether there was a consensus to give a mandate to the secretariat to draft a digest of case law on the UNCITRAL Model Law on Cross-Border Insolvency.

52. **Mr. Loken** (United States of America) expressed support for the idea of such a digest, subject to resource constraints.

53. **Mr. Sorieul** (Secretary of the Commission) said that it was easier to obtain contributions from outside experts for digests than it was to maintain the CLOUT system. The first two digests had benefited from the cooperation of universities and research institutions, which had added material to the CLOUT collection. While digest-related work was not an added burden but served as a spur to the secretariat, it nevertheless remained in the interest of the Commission to attract the free collaboration of outside experts.

54. **Mr. Maradiaga** (Honduras) said that an essential first step would be to secure the involvement of all universities in the Commission's work and thereby help to give more universal coverage to UNCITRAL texts.

55. **Mr. Pérez-Cadalso Arias** (Observer for the Central American Court of Justice) inquired about the approach that was to be adopted to the question of cross-border insolvency, in view of its important implications for criminal law. The Central American Court of Justice was currently setting up a criminal chamber specifically to combat impunity in cases of cross-border crime for which extradition could not be obtained.

56. **Mr. Sorieul** (Secretary of the Commission) said that the UNCITRAL Model Law served as the basis for the Commission's work on insolvency, which was aimed essentially at promoting mutual legal assistance. Future work in that area was yet to be discussed, but States shared an extremely guarded approach to the Commission's possible involvement in criminal law, which was the province, in particular, of the United Nations Office on Drugs and Crime. The Commission had compiled indicators of fraud and did make comments on criminal matters, but it could not go beyond its mandate.

57. **The Chair** said that he took it that the Commission wished to mandate the secretariat to undertake work to prepare a digest of case law on the UNCITRAL Model Law on Cross-Border Insolvency, within the limits of available resources.

Relevant General Assembly resolutions

58. **Ms. Musayeva** (Secretariat) said that the Commission might wish to take note of General

Assembly resolutions 66/94, 66/95 and 66/96, which related directly to its work. She noted that resolution 66/102, on the rule of law, was also relevant to the Commission's work and would be considered under agenda item 21.

59. **Ms. Millicay** (Argentina) regretted that resolution 66/94 merely noted the tradition of alternating the Commission's sessions between New York and Vienna, as that made it difficult to obtain increased funding to maintain that practice. Her delegation considered that, whenever a reference was made to the Commission's operational needs, including the alternation of venues for its sessions, the wording adopted for the resolution should take the form of a recommendation.

60. **Mr. Maradiaga** (Honduras) said that his delegation had made a request to that effect in Vienna in 2011. He endorsed the Argentine suggestion.

61. **Mr. Sorieul** (Secretary of the Commission) said that the secretariat was grateful to delegations that had been seeking to maintain the practice of alternation. The observations of the representative of Argentina had been duly noted by the secretariat, which was open to all suggestions as to how to persuade the General Assembly to continue that practice and maintain and even enhance the Commission's current resource allocation.

62. **Ms. Musayeva** (Secretariat) recalled that, in addition to the aforementioned resolutions, adopted on the recommendation of the Sixth Committee, the General Assembly had in 2011, on the recommendation of the Fifth Committee, adopted resolution 66/246, paragraph 48 of which provided for an increase in non-post resources in order to service the work of the Commission and retain the rotation scheme between Vienna and New York.

63. **The Chair** took it that the Commission wished to take note of General Assembly resolutions 66/94, 66/95 and 66/96.

64. **Ms. Millicay** (Argentina) regretted the Commission's decision to work within existing resources, one of whose effects was to limit the number of printed documents available to delegations. Her delegation called on conference services to make every effort to provide all the necessary documentation.

The meeting rose at 6 p.m.